security of the Federation or any part thereof or to excite a disturbance of the peace, and to define the conditions upon which such assembly, meeting or procession is permitted. The question presented in these proceedings in relation to the validity of the condition restricting the number of speakers revolves in our view not on the matter of its constitutionality but rather on its reasonableness *vel non* in the light of the relevant provisions of the Act and the evidence adduced. The condition in question is certainly open to curial scrutiny by way of judicial review, and we need only refer in relation to the principles therefor to the judgment in *Merdeka University Berhad* v. *Government of Malaysia*[1] (at page 360).

The first respondent gave evidence to the effect that he imposed the condition restricting the number of speakers to 7 because of the time factor and the fact that he would have had to send his men to be present near the scene to ensure that there would be no breach of the peace, and added that there was no other reason. He went on to say that he considered that the dinner would last only until 8.00 p.m. or 9.00 p.m. and then only would the speeches start, and he 'concluded', to quote him, that each speaker would speak for half-an-hour and that as a result the speeches would go on till late at night. We can see no justification in the light of this evidence for the imposition of this restriction as to the number of speakers or that there was any ground for the first respondent to assume that without imposing this restriction the matter of security would be affected or that a disturbance of the peace would be excited. There was a specific time limit stipulated in the application for the licence, namely, 5.00 p.m. to 11.30 p.m., and the licence was in fact issued for that period. If the time limit had been breached, then it was open to the police to exercise their powers and take the necessary action under the provisions of subsections (3), (4), (6) and (8) of section 27 of the Act. The first respondent was only speculating as to what might happen, and on the logic of his explanation for the reason for the imposition of the restriction in question, he might as well have restricted the number of speakers to one only and no more on the speculative hypothesis that he might be unduly prolix and periphrastic.

In the premises we find that there does not appear to have been any valid reason for the restriction imposed on the number of speakers within the time limit granted in the licence, and we find this particular condition unreasonable in the circumstances as the police had the means to deal with any infringement of the time frame specified in the licence under the provisions of section 27 of the Act.

We accordingly at the conclusion of argument allowed this appeal with costs and declared that the condition restricting the number of speakers to 7 was unreasonable. The deposit in court lodged by way of security will be paid out to the appellant.

Appeal allowed.

Solicitors: *Karpal Singh & Co.*

P. PATTO v. CHIEF POLICE OFFICER, PERAK & ORS.

[S.C. (Abdul Hamid Ag. L.P., Mohamed Azmi & Abdoolcader S.C.JJ.) March 13 & April 8, 1986]

[Pulau Pinang – Supreme Court Civil Appeal No. 186 of 1985]

Administrative Law – Licence to hold dinner and lion dance in public place – Refusal of licence by wrong authority – Appellate body wrongly assuming authority – Refusal made in wholly unreasonable period of time so as to preclude appeal – Police Act, 1967, s. 27.

In this case the appellant applied to hold a solidarity dinner and lion dance in a public place on August 30, 1984. The applications were made to the O.C.P.D., Kampar, Perak (the third respondent). The appellant received a letter at 4.30 p.m. on August 30, 1984 from the third respondent informing him that his applications had been forwarded to the Perak Contingent Police Headquarters for consideration by the first and second appellants and that after consideration the applications had been refused. The appellant brought an action for declarations that the first respondent who was the licensing authority under section 27(2) of the Police Act, 1967, did not himself consider the applications and that the applications had in fact been considered by the first and second respondents who had no authority to do so. The learned trial judge dismissed the appellant's claim. The appellant appealed.

Held, allowing the appeal: (1) the third respondent as the licensing authority under the provisions of section 27(2) of the Police Act, 1967 had abdicated his functions by transmitting the applications for consideration and determination by the first and second respondents;

(2) the first respondent is the appellate authority to entertain an appeal against the refusal of the licence but in this case he purported to act at first instance by considering and determining the original applications, thereby depriving the appellant of his statutory right of appeal;

(3) the refusal of the licences applied for by the appellant was therefore made by the wrong authority;

(4) the intimation to the appellant of the refusal of the applications was made in a wholly unreasonable period of time so as to preclude any appeal by him against it.

Cases referred to:

(1) *Simms Motor Units Ltd.* v. *Minister of Labour and National Service* [1946]2 All E.R.201.

(2) *Reg.* v. *Anderson, Exparte Ipec-Air Pty. Ltd.* (1965) 113 C.L.R. 177.

(3) *Reg.* v. *Police Complaints Board, Ex parte Madden* [1983]1 W.L.R. 447.

SUPREME COURT.

Karpal Singh for the appellant.

T. Selventhiranathan (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

Abdoolcader S.C.J. (delivering the judgment of the Court): The appellant instituted an action to claim relief in connection with the applications he made to the third respondent for licences under the provisions of section 27(2) of the Police Act, 1967 ('the Act') to hold a solidarity dinner and a lion dance in Gopeng on August 30, 1984 and the declarations he seeks, shorn of tautology and concisely put, are to the effect that the third respondent who is the licensing authority under section 27(2) of the Act did not himself consider his applications, that the applications were in fact considered and refused by the first and second respondents who had no authority to do so and that the fourth respondent wrongfully seized the loudspeaker equipment which was used that night; there is also an added claim for the return of this equipment and damages. Anuar J., after hearing evidence and submissions on both sides dismissed the appellant's claim with costs on April 22, 1985.

The inception of the events culminating in these proceedings was applications by the appellant who is the Deputy Secretary-General of the Democratic Action Party to the third respondent by two letters dated August 10, 1984 for licences to hold a Democratic Action Party solidarity dinner on August 30, 1984 from 6.00 p.m. until midnight at Dewan Wong Soa Sin See Yeh, Kopisan Baru, Gopeng and a lion dance in front of these premises earlier that day from 5.00 p.m. until 8.00 p.m. On August 30, 1984 at about 4.30 p.m. the appellant was handed a letter dated that very day intimating that his applications had been rejected after consideration by the first and second respondents. The lion dance was called off but the solidarity dinner proceeded nevertheless. At about 9.45 p.m. that night the fourth respondent, an inspector of police, who was in uniform, came with a few policemen and apparently intimated to the gathering that the function was not allowed, and he and his men then took away the equipment we have earlier mentioned.

Section 27(2) of the Act provides that any person intending to convene or collect any assembly or meeting or to form a procession in any public place shall before doing so apply to the Officer-In-Charge of the Police District of that area for a licence for that purpose, and if such officer is satisfied that the assembly, meeting or procession is not likely to be prejudicial to the interest of the security of the Federation or any part thereof or to excite a disturbance of the peace, he shall issue a licence in the prescribed form and define the conditions in regard thereto. Subsection (7) of section 27 of the Act gives any person aggrieved by the refusal to issue a licence under subsection (2) the right to appeal in writing within forty-eight hours of such refusal to a Commissioner of Police or the Chief Police Officer whose decision thereon shall be final. It is therefore abundantly clear that the licensing authority in this case to whom application has to be made for a licence under section 27(2) of the Act and who determines the grant or refusal of any such application would be the third respondent, and the first respondent would be the appellate authority to whom an appeal would lie against the refusal by the third respondent in accordance with the provisions of subsection (7) of that section.

There appears to be some antinomy in the evidence adduced at the trial in that the appellant testified that he spoke to the third respondent's deputy, A.S.P. Alwi, who was then Acting Officer-In-Charge of the Police District, over the telephone on August 27, 1984 to enquire with regard to his applications and was told that they had been forwarded to the Police Headquarters in Ipoh and he was asked to make enquiry thereat. A.S.P. Alwi however gave evidence to the effect that he told the appellant when he rang that he had rejected both his applications and asked him to appeal to the first respondent against his decision. We do not think that much turns upon this conflict of evidence as what really matters and is crucial is the letter of August 30, 1984 which the appellant received at 4.30 p.m. on that day from A.S.P. Alwi as the Deputy Officer-In-Charge of the Police District, Kampar informing him that his applications had been forwarded to the Perak Contingent

Police Headquarters for consideration by the first and second appellants, and that after consideration both applications were refused.

It is manifestly evident from this reply of August 30, 1984 that the third respondent as the licensing authority under the provisions of section 27(2) of the Act had abdicated his functions by transmitting the applications for consideration and determination by the first and second respondents. A.S.P. Alwi in giving evidence tried to explain his action by relying on what he referred to as departmental procedure in submitting the applications to the Contingent Police Headquarters. This is as lame an excuse as one can think of and we are left to ponder on the conundrum that would ensue as a result of this soi-disant departmental procedure if the licensing authority in the exercise of his discretion was amenable to the issue of a licence but is vetoed by his superiors in the person of the first and second respondents, or contrariwise. He would then be acting under dictation and in consequence fettering the discretion legislatively vested in him and which must be exercised by him, and him alone, in accordance with the provisions of subsection (2) of section 27 of the Act [*Simms Motor Units Ltd.* v. *Minister of Labour and National Service*[1]; *Reg.* v. *Anderson, Ex parte Ipec-Air Pty. Ltd.*[2] 177; *Reg.* v. *Police Complaints Board, Ex parte Madden.*[3]]

The other point is that the first respondent is the appellate authority to entertain an appeal against the refusal of a licence but he has in this case purported to act at first instance by considering and determining the original applications, thereby depriving the appellant of his statutory right of appeal. This whole thing is further compounded by the fact that the refusal of the applications made on August 10, 1984 was only intimated in writing to the appellant at 4.30 p.m. on August 30, 1984 itself, half-an-hour before the lion dance was scheduled to commence and an hour-and-a-half before the dinner. We need say no more than that this in any event by itself clearly and effectively curtailed the appellant's statutory right of appeal to the first respondent against the refusal of his applications. His right of appeal was rendered wholly nugatory as, first, there was no one to appeal to since the first respondent, the statutory appellate entity himself, had stepped into the arena at first instance by usurping the functions of the third respondent, and second, the time factor was such that even if there was no other impediment to an appeal to the first respondent, it would have been absolutely impossible to have an appeal lodged and determined in time for the dinner and the lion dance scheduled to commence half-an-hour after receipt of the intimation of refusal from the third respondent, and that too on a Saturday afternoon. We would stress that section 27(7) of the Act specifically provides a minimum period of forty-eight hours after the refusal of a licence under the provisions of subsection (2) within which an appeal to the first respondent which must be in writing has to be made.

Mr. Karpal Singh for the appellant indicated that he was not in the circumstances proceeding with the question of the equipment seized by the fourth respondent and it is accordingly not necessary for us to deal with this aspect of the matter.

In the event and for the reasons we have given we allowed this appeal at the conclusion of argument with costs here and below, and declared that the refusal of the licences applied for by the appellant was made by the wrong authority, that the first respondent who is the appellate body had wrongly assumed authority in this regard, and that the intimation to the appellant of the refusal of his applications was made in a wholly unreasonable period of time so as to preclude any appeal by him against it. The deposit in court lodged by way of security will be paid out to the appellant.

Appeal allowed.

Solicitors: *Karpal Singh & Co.*

LEONG HONG KHIE v. PUBLIC PROSECUTOR AND TAN GONG WAI v. PUBLIC PROSECUTOR

[F.C. (Wan Suleiman, Seah & Hashim Yeop A. Sani F.JJ.) December 3, 1984]

[Kuala Lumpur – Federal Court Criminal Appeals Nos. 21 and 22 of 1984]

Criminal Law and Procedure – Charge of trafficking in dangerous drug – Evidence of informers – Informers not called to give evidence in Court – Hearsay Evidence – Whether evidence admissible as res gestae – Appeal allowed.

Evidence – Hearsay Evidence – Evidence of informers – Informers not called to give evidence in